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ABSTRACT

As public school personnel struggle to provide preschool-age children with disabilities with high quality, normalized or inclusive preschool experiences, there is an increased need for collaboration with community-based early childhood providers. This paper addresses the federal legal requirements for public school, Head Start, and community-based early childhood personnel, as well as the rights of parents related particularly to public education services to young children (ages 3-5) with disabilities in community-based programs. Three federal laws are reviewed: the Individuals with Disabilities Education Act, the Head Start Act, and the Americans with Disabilities Act. The legal responsibilities of public school personnel, child care providers, Head Start grantees, and parents are specifically discussed for the following areas: (1) individualized educational placements, (2) eligibility, (3) supervision of service delivery, and (4) financial responsibility. The paper concludes that effective inclusive programs are the result of collaborative partnerships. An appendix lists seven organizational resources for information on early childhood policies and programs. (DB)

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POLICY AND PRACTICE IN EARLY CHILDHOOD

SPECIAL EDUCATION SERIES

PROVIDING PUBLIC EDUCATION SERVICES TO YOUNG CHILDREN WITH DISABILITIES IN COMMUNITY-BASED PROGRAMS: WHO'S RESPONSIBLE FOR WHAT?

Deborah F. Rose and Barbara J. Smith

January, 1994

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PROVIDING PUBLIC EDUCATION SERVICES TO YOUNG CHILDREN WITH DISABILITIES IN COMMUNITY-BASED PROGRAMS: WHO'S RESPONSIBLE FOR WHAT?

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Pittsburgh, PA

There is a growing trend in our country to include children with disabilities in settings that have traditionally served children who are typically developing. This is occurring because: 1) research studies have shown that children with disabilities learn as well or better in these normalized or integrated settings (Salisbury & Smith, 1991; Strain, 1990), 2) parents want their children to have neighborhood friends who are in these settings (Strain, 1990), 3) integration of all people with disabilities into society is a growing trend, and 4) state and federal laws have been passed encouraging, or, in some cases, requiring integration of services. Indeed, several education laws require schools to establish integrated or normalized opportunities for educating children with disabilities. Public schools are required to educate children with disabilities from age three. Since most schools do not serve typically developing three and four year old children, they must be creative in their efforts to provide young children integrated or normalized education opportunities.

As public school personnel struggle to provide preschool-age children (3-5) with disabilities with high quality, normalized or inclusive preschool experiences, there is an increased need for collaboration with community-based early childhood providers such as child care centers and Head Start programs. A good deal of information sharing is required in order for effective collaboration to occur.

As public school personnel enter collaborative relationships with community-based preschool and child care providers, it is helpful to be clear about who has legal responsibility for what service. Three federal laws have particular impact on services to young children with disabilities and their families. The **Individuals with Disabilities Education Act (IDEA)** requires public schools to provide a free appropriate public education (FAPE) to children with disabilities ages 3 - 21. Additionally, each eligible child must have an Individualized Education Program (IEP) which states the amount and frequency of special education and related services to be provided to the child and family. All eligible children, must have an IEP that is under the direct supervision of the local school district or other public education agency.

Second, the **Head Start Act** and its regulations govern the provision of comprehensive health, nutritional, educational, and social services to primarily low-income young children and their families. Head Start must serve children with disabilities as at least 10% of their state-wide enrollment.

Third, the **Americans with Disabilities Act (ADA)** prohibits discrimination based on disability for persons of any age. Community-based child care and Head Start providers must observe the requirements of the ADA. Additionally, state laws and local guidelines must be considered when collaborating between agencies, however, this paper describes only federal laws.

It is important to recognize that while federal requirements govern many of our decisions about education and care settings for children with disabilities, it is imperative that such decisions be driven by parents' wishes. Parents must be integral

members of the planning process for the individual placement of their child.

This paper focuses on the differing federal legal requirements for public school, Head Start, and community-based early childhood personnel and the rights of parents related particularly to public education services to young children with disabilities, age 3-5 years, in community-based programs. Under the headings below, the responsibilities of each collaborating party have been described.

Making Individualized Educational Placements

Public School Personnel:

Under the IDEA, it is the sole legal responsibility of the public school to provide special education and related services to eligible children with disabilities from age three to twenty-one. The IDEA regulations require that the individual placement of a child (the locale where the child will receive her or his special education and related services) be determined annually, be based on the child's IEP, and be located as close as possible to the child's home. Additionally, the IDEA regulations specify that children be placed in the Least Restrictive Environment (LRE). The LRE regulations state that children with disabilities should be educated alongside their typically developing peers unless their disability prevents them from succeeding in the regular education environment with supplementary aides and services. Also, schools must ensure a continuum of alternative placements in which young children with disabilities are provided special education and related services.

The IDEA regulations related to placement decisions encourage collaboration

with community-based programs and provide guidance to state and local public school personnel seeking to develop appropriate placements for children. The guidance suggests that preschool age children with disabilities may receive their special education and related services in non-public school settings such as child care or Head Start programs so long as the special education and related services meet the child's IEP and are under the supervision of the public school.

Child Care Provider:

Although the child care setting may be included in the public school's continuum of LRE placements, child care providers have no legal responsibility for developing the continuum or providing special education and related services. However, good practice indicates that the child care setting must be involved in the discussion of whether the setting is ready and able to accept children that the public schools would like to place in their program for their special education and related services. If the child care setting agrees to the placement, the public school has the responsibility for ensuring that the child receives all of the special education and related services needed. Collaboration will facilitate how, when and by whom these services will be provided in the child care setting. Some public schools provide the special services by sending itinerant teachers or therapists to the community-based program to work with the child and other personnel. Others are providing special education teachers for a "team teaching" model agreed to by the community-based program. Such collaboration should also provide for inservice training, if needed, by

either public school or child care personnel. If a parent is seeking a child care placement, not educational services through the public schools, then the Americans with Disabilities Act (ADA) comes into play. Even though the public schools are not involved in this case, the ADA prohibits the child care program from denying entry based solely on the child's disability.

Head Start Grantee:

The Head Start regulations specific to children with disabilities state that each Head Start grantee or delegate agency must provide: enrollment opportunities for children with disabilities (at least 10% state-wide), screening, referrals to the school district for evaluations, accessible services, individualized plans, and special services and materials. Because Head Start has similar responsibilities to young children with disabilities as the public schools, they are encouraged by their regulations to coordinate their efforts and responsibilities with the local school district. In some cases, the school district is the Head Start grantee. In many other cases, however, the grantees are independent agencies. Collaborative activities include identification and screening activities, sharing resources, and training.

Parent:

While parents of children with disabilities do not have a legal responsibility to secure the appropriate preschool placement for their child, they have the right to act

in partnership with the public school personnel in determining the placement that is best suited to the needs of their child and family. Parents may suggest alternative placements for their children such as private child care facilities located near the family home. Parents also have a right to an impartial due process hearing under the IDEA if they have complaints related to their child's identification, evaluation or placement by the public school. Parents may review their child's records and have their child evaluated independently. Public school personnel must inform parents, in their native language, of any changes in their child's identification, evaluation, or placement. If the public school can not locate a child's parents, the child has the right to have a surrogate parent act in their behalf. Of course, if the parent is seeking only child care versus special education and related services, the public schools do not need to be involved. The child's civil rights under the ADA are that she/he may not be denied services solely due to the disability.

Eligibility

Public School Personnel:

The IDEA regulations define eligible children as follows:

"...Children with disabilities means those children evaluated ... as having mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities, and who because of those impairments need special education and related services.

(2) The term "children with disabilities" for children aged 3 through 5 may, at a State's discretion, include children - (i) Who are experiencing developmental

> delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (ii) Who, for that reason, need special education and related services." (§300.7 IDEA)

Child Care Provider:

Under the ADA, all child care programs are required to use the same criteria to determine eligibility for all children. Child care programs are not permitted to deny children services based solely on their disability. Some private child care programs that are operated by religious organizations are exempt from the requirements of the ADA. The ADA defines a person with a disability as follows:

> "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." (§12102, ADA)

Head Start Grantee:

Head Start regulations that define children with disabilities were released in January of 1993 and are nearly identical to the eligibility requirements of the IDEA as listed above. The regulations include an "other" category (§1308.17) which is intended to facilitate coordination with public schools, reduce record keeping, and assist parents in making the transition from Head Start to school-age services. This category encompasses children with deaf-blindness and multiple disabilities.

Parent:

Parents have the right to seek enrollment for their children in any private or public child care setting of their choosing or their local public school as they would for

any child (excepting certain child care facilities that are operated by religious organizations). Other eligibility requirements that pertain to all children such as income level may apply.

Supervision of Service Delivery

Public School Personnel:

Public school personnel are ultimately responsible for the supervision of any eligible child's special education or related service in the child's IEP. The IDEA regulations state:

> "(1) ...That each educational program for children with disabilities administered within the State, including each program administered by any other public agency- (i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA [State Education Agency]; and (ii) Meets the education standards of the SEA." (§300.600, IDEA)

Special education is defined by the IDEA regulations as:

> "(a)(1)..."special education" means specifically designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including-
> (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
> (ii) Instruction in physical education..." (§300.17, IDEA)

Related services is defined by the IDEA regulations as:

> "(a)..."related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health

services, social work services in schools, and parent counseling and training." (§300.16, IDEA)

Child Care Provider:

Child care providers have responsibility to meet state or local requirements for their program activities and curricula. Child care providers have no direct responsibility under the IDEA for the supervision of Individual Education Program (IEP) goals. For children receiving their special education and related services in child care settings, public school personnel may collaborate with the child care program by, for example, having a certified, itinerant early childhood special education teacher provide support to the child care teacher on an on-going basis and supervise the IEP services. Ideally, these relationships should be developed before placement is made in order to have a successful experience for all personnel and the child.

Head Start Grantee:

The Head Start regulations specific to services to children with disabilities state:

"the grantee or delegate agency must arrange or provide special education and related services necessary to foster the maximum development of each child's potential and to facilitate participation in the regular Head Start program unless the services are being provided by the LEA [Local Education Agency] or other agency. The plan must specify the services to be provided directly by Head Start and those provided by other agencies. The grantee or delegate agency must arrange for, provide, or procure services which may include, but are not limited to special education and these related services:
(1) Audiology services...
(2) Physical therapy...
(3) Occupational therapy...
(4) Speech or language services...
(5) Psychological services...
(6) Transportation ...

(7) Assistive technology..." (§1308.4 (h)(1-7), Head Start)

If the child's Individual Education Program (IEP) has been developed by Head Start, then Head Start has the supervision responsibility. If the IEP has been developed by the local public school personnel, they have the supervision responsibility. Ideally, for children who are eligible for both Head Start and IDEA services, the child's IEP will be developed jointly by personnel from Head Start and the public school. The details of IEP supervision should be worked out via written agreement between the school district and Head Start program as soon as the child has been identified for services.

Parent:

Parents know the most about their child and their input into the IEP process and subsequent service delivery is essential in delivering the highest quality services to the child. Parents and professionals working in partnership ensures the best chance of successful experiences for children.

Financial Responsibility

Public School Personnel:

Without exception, the public school is responsible for all services that appear on a child's IEP that have been developed by the public school personnel. The public school is encouraged to work cooperatively with child care and Head Start programs on fiscal matters. In some communities, cooperative arrangements such as trading services and providing training to child care personnel in exchange for child care slots

are being used currently in lieu of direct payment from public schools to child care programs.

Child Care Provider:

The ADA calls for public services (child care programs) to make reasonable accommodations in order to prevent discrimination against people with disabilities. Child care facilities may be required to do something differently or do something additional to ensure the full participation of all children in the child care program. Examples of reasonable accommodation in a child care setting include:

> Play: Using sounding balls for children with visual impairments. Adjusting the height of the water/rice table to accommodate a wheel chair. Moving table top puzzles to the floor for prone sitting or reclining. Adding knobs to puzzles for children with fine motor delays or shading puzzle bottoms to afford greater contrast for children with visual impairments.
>
> Toileting: Providing more frequent opportunities for children to use the bathroom with adult assistance. Providing diaper changing areas.
>
> Physical Plant: Widening doorways to accommodate wheel chair access. Building entrance ramps and curb cuts to ensure access.

Head Start Provider:

In the case of children who are dually-eligible for Head Start disability services and IDEA services, both Head Start and the public schools have a responsibility for service provision. Payment arrangements should be worked out via collaborative agreements prior to the initiation of services.

Parent:

Parents are never responsible for the cost of their child's free appropriate public education (FAPE) under the IDEA so long as the services appear on the child's IEP, e.g., special education and related services. If the public school provides the IEP services in a child care program, the IEP services are the responsibility of the public school. Parents may be responsible for the part of the child's day that does not appear on the child's IEP. For instance, the child's IEP may say that the child requires half day special education and related services but the parent needs full day child care. The parent may be responsible for payment or for making arrangements for payment for the half day that is not covered by the IEP services.

Conclusion

The notion of educating all children together is not new. It is often referred to as inclusion. Indeed, federal law has called for public schools to serve children with disabilities in the least restrictive environment for twenty years, yet efforts to include young children with disabilities alongside their typically developing peers in community-based programs has been occurring only sporadically across the country. Truly successful inclusion efforts have always been born out of collaborative partnerships. Personnel from Head Start and child care programs, public schools, and parents sitting together will often find that there are no real barriers to inclusion, only perceived barriers. Moreover, empowering all of the collaborating parties with information regarding who is legally responsible for what service reduces unnecessary

anxieties about the process of including children in programs that may never before have attempted to enroll children with disabilities.

Through successful partnerships, the concerns of the collaborating parties can be aired and addressed. Training needs can be met and consultative relationships can be forged before a child is placed in a community-based program. Without partnerships, concerns go underground, are never dealt with openly, and potentially erode the inclusion efforts that are attempted.

While it may seem that the public school and the community-based child care program are very different, they share a common concern for the growth and development of children. Parents, working in concert with the public schools, can be the catalysts for the inclusion of their children in community-based programs. If parents feel that their child would benefit from attending their neighborhood child care program with appropriate supports and services, they have the right to explore these options. Initiating this exploratory process is the first step in building a partnership between the public school and the child care program. Successful partnerships make for successful inclusion experiences for all.

References

Americans with Disabilities Act (ADA) - 42 U.S.C. Ch. 126 secs. 12101-12213, July 12, 1990.

Administration for Children and Families - Head Start Program; Final Rule - 45 CFR Parts 1304, 1305, and 1308, January 21, 1993.

Individuals with Disabilities Education Act (IDEA) - Part B - Assistance to States for the Education of Children with Disabilities Program and Preschool Grants for Children with Disabilities; Final Rule 34 CFR Parts 300-301, September 29, 1992.

Salisbury, C.L. & Smith, B.J. (1991). The least restrictive environment: Understanding the options. Principal, 71 (1), pp. 24-27.

Strain, P.S. (1990). Least restrictive environment for preschool children with handicaps: What we know, what we should be doing. Journal of Early Intervention, 14 (4), pp.291-296.

Appendix A

Resources for Information on Early Childhood Policies and Programs

Council for Administrators in Special Education (CASE)
of the Council for Exceptional Children
615 16th Street, NW
Albuquerque, NM 87104
(505) 243-7622

The Division for Early Childhood (DEC)
of the Council for Exceptional Children
1920 Association Drive
Reston, VA 22091
(703) 620-3660

National Head Start Resource Access Program
Administration for Children, Youth and Families
Office of Human Development Services
U.S. Department of Health and Human Services
P.O. Box 1182
Washington, DC 20013
(202) 245-0562

National Association for the Education of Young Children (NAEYC)
1834 Connecticut Avenue, NW
Washington, DC 20009-5786
(800) 424-2460

National Association of State Directors of Special Education (NASDSE)
1800 Diagonal Road, Suite 320
King Street Station 1
Alexandria, VA 22314
(703) 519-3800

National Early Childhood Technical Assistance System (NEC-TAS)
Suite 500
NCNB Plaza
Chapel Hill, NC 27514
(919) 962-2001

U.S. Office of Special Education Programs
Early Childhood Branch
400 Maryland Avenue, S.W.
Washington, DC 20202
(202) 732-1084